

May 14, 2013

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



BUCHALTER NEMER
ROBERT E. IZMIRIAN (SBN: 53805)
MIA S. BLACKLER (SBN: 188112)
CRAIG C. CHIANG (SBN: 209602)

A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Telephone: (415) 227-0900
Fax: (415) 227-0770
Email: rizmirian@buchalter.com; cchia

The following constitutes
the order of the court. Signed May 14, 2013

M. Elaine Hammond

M. Elaine Hammond
U.S. Bankruptcy Judge

Attorneys for Chapter 11 Trustee
KYLE EVERETT

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

PACIFIC THOMAS CORPORATION, dba
PACIFIC THOMAS CAPITAL, dba
SAFE STORAGE,

Debtor.

KYLE EVERETT, CHAPTER 11 TRUSTEE,

Plaintiff,

vs.

RANDALL WHITNEY aka RANDALL C.M.
WHITNEY aka RANDALL WORSLEY aka
RANDALL C.M. WORSLEY, an individual;
PACIFIC TRADING VENTURES dba SAFE
STORAGE MANAGEMENT COMPANY, a
California corporation; PACIFIC TRADING
VENTURES, LTD. ("PTVL"), a Nevada
corporation; and JILL V. WORSLEY aka V.
JILL WORSLEY, an individual,

Defendants.

Case No. 12-46534 MEH

Chapter 11

Adv. Proc. No. 13-04079

**ORDER ADDRESSING BUSINESS
RECORDS AND PREMISES RENTS**

Date: April 26, 2013

Time: 1:00 p.m.

Place: 1300 Clay Street, Courtroom 215
Oakland, California

Judge: Hon. M. Elaine Hammond

1 The Court's Order to Show Cause for Preliminary Injunction came on for hearing on April
2 26, 2013 at 1:00 p.m. in the above-referenced Court. Mia S. Blackler and Craig C. Chiang
3 appeared on behalf of Kyle Everett, Chapter 11 Trustee (the "Trustee"), David Sternberg and
4 Jacob Barlev appeared on behalf of Pacific Trading Ventures and Jill Worsley, Walter
5 Gouldsbury III appeared on behalf of Bank of the West, Eric Nyberg appeared on behalf of
6 Summit Bank. Randall Whitney appeared pro per. All other appearances are as noted in the
7 record. The Court has considered all pleadings, declarations, exhibits and other documentary
8 evidence presented at, and prior to, the hearing, as well as all oral arguments made at the hearing.

9 **IT IS HEREBY ORDERED:**

10 A. Pacific Thomas Corporation, dba Pacific Thomas Capital, dba Safe Storage (the
11 "Debtor"), and its respective officers, agents, servants, employees and all other persons who are
12 in active concert or participation, and Randall Whitney must turn over to the Trustee, in
13 whichever medium that the Trustee may request, including direct access, all of Debtor's files,
14 including, but not limited to, all electronic mail received by or sent from the domain account
15 www.pacificthomas.com. The aforementioned electronic mail may include electronic mail which
16 is now, or at any time has been associated with the GoDaddy.com Account Number 4693252; it
17 may also include electronic mail which is now or at any time has been stored on an exchange
18 server that is owned by a related entity, whether Randall Whitney or any other party believes that
19 an electronic mail does not relate to the Debtor. Provided that, Randall Whitney shall not be
20 required to turn over electronic mail that is subject to the attorney-client privilege of Randall
21 Whitney for any matters other than those involving Debtor. Randall Whitney may be required to
22 prepare and provide a log of all such privileged email correspondence.

23 B. Pacific Trading Ventures dba Safe Storage Management Company ("PTV"),
24 Pacific Trading Ventures, Ltd. ("PTVL"), and Jill Worsley (collectively, the "PTV Defendants"),
25 and their respective officers, agents, servants, employees and all other persons who are in active
26 concert or participation, must turn over to the Trustee all electronic and hard copies of the
27 business records of PTV and PTVL, which the Trustee is permitted to share only with members
28 of his office, his counsel, his accountants, his broker, and any other professional that the Trustee

1 may employ (the “Professionals”). The Professionals will not disseminate such business records
2 to third parties, subject to further Court order. The Trustee is permitted to share summaries of the
3 business records of PTV and PTVL with Bank of the West, Summit Bank, and their attorneys (the
4 “Bank Parties”). The Bank Parties will not disseminate such business records to third parties,
5 except for the purpose of obtaining appraisals, and otherwise subject to further Court order. The
6 PTV Defendants must provide the Trustee with all business records of PTV and PTVL, whether
7 existing now or in the future, including, but not limited to, the following information:

- 8 1. A detailed accounting of all funds received, or disbursed, by the PTV
9 Defendants, on behalf of the Debtor, including, but not limited to, the eleven
10 buildings that are utilized as self-storage facilities (the “Safe Storage Facility”)
11 at real property of which the Debtor is record owner, including real property
12 located at 2615 E. 12th Street, 2783 E. 12th Street, 2801 E. 12th Street, 1111 29th
13 Avenue, 1113-15 29th Avenue, and adjacent parking lots, in Oakland,
14 California (the “Premises”) for each of the 12 months immediately prior to the
15 Debtor’s bankruptcy filing date of August 6, 2012 (the “Petition Date”) and
16 each of the months from the Petition Date through the present, including, but
17 not limited to, access to all system and source data for all the funds received or
18 disbursed in connection with the Safe Storage Facility to the extent not already
19 provided to the Trustee;
- 20 2. All books and records, including, but not limited to, all banking statements and
21 cancelled checks, detailing all funds received, or disbursed, by non-debtor
22 entities, on behalf of the Debtor in connection with the Premises, including, but
23 not limited to, the Safe Storage Facility, for each of the 12 months immediately
24 prior to the Petition Date and each of the months from the Petition Date
25 through the present, including, but not limited to, access to all system and
26 source data;
- 27 3. A historical rent roll, for each of the 12 months immediately prior to the
28 Petition Date and each of the months from the Petition Date through the

1 present, for all properties owned by the Debtor, including tenant payment
2 dates, check numbers, and payment amounts, the period for which the tenant
3 payments were made, and the current tenant unpaid balances;

4 4. All monthly expense reconciliations between the Debtor and PTV and/or
5 PTVL; and

6 5. For each transfer that PTV and/or PTVL has made to PTC since the Petition
7 Date, (i) the check number (or identification of wire transfer), (ii) the transfer
8 date, (iii) the tenant(s) for which the transfer is made, and (iv) the location of
9 the property and number of spaces used if it is for parking.

10 C. The PTV Defendants will provide the Trustee with all records to all bank accounts
11 to which funds generated from the Premises, including the Safe Storage Facility, are deposited.

12 D. The PTV Defendants will make available for the Trustee's review, in the presence
13 of the PTV Defendants, all electronic mail sent and received by the PTV Defendants. In the event
14 that the Trustee and the PTV Defendants agree that the electronic mail constitutes business
15 records of PTV or PTVL, the Trustee may obtain a copy of such electronic mail. Any dispute
16 whether any email constitutes business records of PTV and PTVL, and subject to turn over to the
17 Trustee, will be resolved by the Court via a telephonic conference.

18 E. The Trustee and Jill Worsley will make reasonable efforts to meet once a week to
19 review the business records and operations of PTV and PTVL.

20 F. Any pleading filed by the Trustee in the above-captioned adversary proceeding or
21 the Debtor's main bankruptcy case containing bank account data that the Trustee obtained solely
22 from the PTV Defendants and not by any other means will be filed under seal, unless the Court
23 orders otherwise.

24 G. The PTV Defendants will transfer all proceeds generated from the Premises to the
25 Trustee, except that, as to proceeds generated solely from funds received from the tenants/users of
26 the Safe Storage Facility, the PTV Defendants will transfer to the Trustee the total of at least
27 \$70,000 each month, consisting of a \$35,000 transfer/payment each on the 5th and 20th days of
28 each month. Conditioned on the payment of \$70,000 to the Trustee in the month of May 2013, ,

1 PTV and/or PTVL may utilize \$30,000 of additional proceeds generated solely from funds
2 received from the tenants/users on account of the Safe Storage Facility for operations and other
3 costs which benefit the Premises during the month of May 2013.

4 H. All proceeds generated solely from funds received from the tenants/users of the
5 Safe Storage Facility will be initially deposited into one of two accounts utilized by the PTV
6 Defendants, at least until May 26, 2013, after which time the Court may direct otherwise. The
7 Trustee will have full access to review the accounts of PTV and PTVL to which proceeds
8 generated from funds received from the tenants/users of the Safe Storage Facility have been
9 deposited.

10 I. On or before May 13, 2013, the PTV Defendants will propose an expense budget
11 to the Trustee identifying how the PTV Defendants propose to use proceeds generated from funds
12 received from the tenants/users of the Safe Storage Facility in excess of the minimum \$70,000 to
13 be turned over to the Trustee. Any dispute over the use of funds received from the tenants/users
14 of the Safe Storage Facility in excess of the minimum \$70,000 to be turned over to the Trustee
15 will be resolved by the Court.

16 J. Nothing set forth in this Preliminary Injunction and Order affects the ability of the
17 Trustee or the PTV Defendants from asserting rights as to funds received from the tenants/users
18 of the Safe Storage Facility.

19 K. A continued status conference is set for May 23, 2013 at 3:00 p.m.

20 **IT IS SO ORDERED.**

21 *****

22 Approved as to form and content:

23 /s/ David M. Sternberg
24 David M. Sternberg & Associates
25 Counsel to PTV and Jill Worsley
26
27
28

1 COURT SERVICE LIST
2 Jill Worsley
3 30 Creek Tree Lane
4 Alamo, CA 94507-1916
5 Pacific Thomas Corporation
6 DbA Safe Storage Management Company
7 1818 Mt. Diablo Blvd., Suite D
8 Second Floor
9 Walnut Creek, CA 94596
10 Randall Whitney
11 Jill Worsley
12 Pacific Thomas Corporation
13 1818 Mt. Diablo Blvd., Suite D
14 Walnut Creek, CA 94596
15 Randall Whitney
16 5215 Masonic Avenue
17 Oakland, CA 94618-2631
18 Randall Whitney
19 2615 East 12th Street
20 Oakland, CA 94601
21 Roger Huddleston
22 c/o Nicholas P. Hulchiy
23 Belzer, Hulchiy & Murray
24 3650 Mt. Diablo Blvd., 1130
25 Lafayette, CA 94549-6820
26 Roger W. Worsley
27 1997 Ascot Drive #B
28 Moraga, CA 94556
Stephen Thomas Worsley
2458 Pamino Way
Pleasanton, CA 94566
Timothy Brophy
395 Civic Drive, Suite J
Pleasant Hill, CA 94523-1951